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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 735

RIVOLI TRUCKING CORPORATION,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

The petition of Rivoli Trucking Corporation prays that a writ of certiorari issue to review the order of the United States Court of Claims entered in the above entitled case on October 9, 1964, granting defendant's motion for summary judgment dismissing the petition.

The written order of the Court below is at this time unreported and is printed herein, *infra*, page 7.

Jurisdiction of this Court is invoked under 28 United States Code section 1255(1).

Facts.

During the times recited in the petition as presented to the United States Court of Claims, petitioner rendered trucking and other services at the instance and order of

Respondent, of the reasonable value of $877,500.63. Respondent has failed, and neglected to pay this sum or any part thereof although due demand therefor has been made.

On or about June 14, 1963, Petitioner commenced an action in the United States District Court for the Southern District of New York, against the United States, Index No., 63 Civ. 1766, wherein petitioner alleged:

> "1. This action arises under an Act of Congress regulating interstate and foreign commerce, 67 Stat. 541; Article 1, Section 8 Article III section 2, the Fourth, Fifth, Thirteenth and Fourteenth Amendments to the Constitution of the United States and the matter in controversy exceeds the sum of three thousand ($3,000.00) dollars, exclusive of any claim for interest or costs and this Court has jurisdiction to hear and decide the issues involved herein pursuant to 28 United States Code 1331; 28 United States Code 1337, and the Defendant has consented to be sued herein, such consent is announced at 28 United States Code 1346 2 (b).
>
> "3. Whenever reference is made in this complaint by plaintiff to the Federal Maritime Board, it shall be taken to mean and plaintiff intends to refer to the Federal Maritime Board, as Defendant's agent, servant and employee, that ordered plaintiff's services and chartered plaintiff's trucks and took or did cause to be taken and used property belonging to plaintiff and that during all of the times mentioned herein the said Federal Maritime Board was the Defendant's duly appointed and qualified agent, servant and employee acting within the scope of the authority of its office and employment and under the authority duly delegated to it by the Defendant.
>
> "4. The Defendant owes plaintiff the sum of $877,500.63 for work, labor and services performed during the period of time between January 1, 1954

and April 8, 1958, at the special instance and demand of the Defendant's agent, the Federal Maritime Board. No part of the aforesaid sum has been paid and it remains unpaid.

"AS AND FOR A SECOND CAUSE OF ACTION

"5. Plaintiff repeats and re-alleges the allegations set forth at paragraphs numbered 1, 2, 3, above with the same force and effect as though those allegations were set forth at length in this cause of action.

"6. From January 1, 1954 until April 8, 1958 plaintiff performed work, labor and services for the Defendant at the special instance, request and demand of the Defendant's agent, servant and employee, the Federal Maritime Board, of the value of $877,500.63. No part of the aforesaid sum has been paid and it remains unpaid.

"WHEREFORE plaintiff prays judgment against the Defendant in the amount of $877,500.63."

On or about September 5, 1963, the United States District Court for the Southern District of New York entered an order in said suit, transferring the suit to the United States Court of Claims, as follows:

MEMORANDUM #29,160 (unreported)

"Plaintiff, Rivoli Trucking Corp., (Rivoli) has brought an action against the United States alleging in substance that the government owes it $877,500.63, for work, labor and services performed between January 1, 1954 and April 8, 1958". Defendant moves for summary judgment alleging among other things that this Court has no jurisdiction. M. Maurice Graham (Graham) plaintiff's attorney in this action and its vice-president during the period referred to above has also moved to intervene as a plaintiff in this action.

Rivoli's action is the latest in a series of law suits and legal manoeuvers apparently growing out of the same events. The complaints in the prior actions were dismissed and plaintiff's attempts to amend its complaints were denied, see Rivoli Trucking Corp. *v.* New York Shipping Ass'n. 167 F. Supp. 940 and 167 F. Supp. 943; Rivoli Trucking Corp. *v.* District Director 162 F. Supp 53, see also Rivoli Trucking Corp. *v.* United States 62 Civ. 2484, unpublished opinions on McGohey, J. Levet, J. and Bryant, J. dated October 4, 1962, February 8, 1963 and May 28, 1963 respectively.

Rivoli's latest complaint alleges various jurisdictional basis including 67 Stat 541 (1953); Article 1. P. 8 Article III P. 2 of the United States Constitution and the Fourth, Fifth, Thirteenth and Fourteenth Amendments thereto, 28 U. S. C. 1331 and 1337 and that the Defendant has consented to be sued and that such consent is announced at 28 U. S. C. 1346 2 (b).

Plaintiff's action is clearly based upon contract express or implied. Since it has a claim against the United States, none of the jurisdictional basis cited will suffice unless they grant jurisdiction to this Court to hear a claim of this sort against the United States. The only Statute remotely in point cited by plaintiff is 28 U. S. C. 1346 (b), popularly known as the Federal Tort Claims Act. However, this Act does not confer jurisdiction here because plaintiff's claim is not a tort claim. Even if it were, it would be barred because for claims of this sort there is a two year statute of limitations (28 U. S. C. 2401 (b)), which has run.

It is more probable that plaintiff's complaint seeks to invoke 28 U. S. C. 1346 (a) (2) more popularly known as the Tucker Act. The pertinent portion of that Act provides that the District Courts shall have original jurisdiction of a civil action or claim against the United States:

> "not exceeding $10,000.00 in amount founded either upon the Constitution, or any Act of Congress or any regulation of an executive department or upon any

express or implied contract with the United States or for liquidated damages in cases not sounding in tort. (emphasis added).

Plaintiff's claim clearly falls within the category of "express or implied contract with the United States" but it just as clearly seeks recovery of a sum well over $10,000.00. Therefore this Court does not have jurisdiction to entertain the claim. The statutory framework for contract claims against the Government allows claims of over $10,000.00 to be asserted only in the Court of Claims. (Ove Gustaveson Contracting Co., *v.* Floete 278 F. 2nd 912; 364 U. S. 894. It is possible that plaintiff may wish to waive the portion of its claim in excess of $10,000.00; see United States *v.* Johnson 153 F. 2nd 846; Jones *v.* United States 127 F. Supp. 31. Should it fail to do so this Court rather than dismiss the complaint will order the case transferred to the Court of Claims, such transfer being "in the interest of justice". 28 U. S. C. 1406 (c).

In view of the above it is unnecessary to deal with the other alleged basis upon which the Defendant urged dismissal of the complaint or to rule on Graham's application to intervene.

The case shall be transferred to the Court of Claims unless within 10 days from the date hereof plaintiff files an amended complaint reducing the damages claimed to no more than $10,000.00. In that event Defendant may renew in this Court the motion for summary judgment on the basis other than lack of jurisdiction set forth in the papers. So ordered.

Dated: New York, N. Y.
September 5, 1963

WILFRED FEINBERG,
U. S. D. J.

Upon the strength of the directive of the United States District Court for the Southern District of New York, as above set forth, Petitioner commenced an action against the United States in the United States Court of Claims and in No. 325-63 it alleged:

> "1. At all of the times mentioned herein Plaintiff, Rivoli Trucking Corporation, was and still is a corporation duly organized and existing under and by virtue of the laws of the State of New York with an office and place of business at 108 Front Street, City and State of New York.
>
> 2. At all of the times herein mentioned, Defendant United States of America, was and still is a corporation sovereign which has consented to be sued herein, such consent is announced at title 28 United States Code 1346 (a) (2); Judiciary and Judicial Procedure Section 1491 and this claim has been transferred to this Court by order of the United States District Court for the Southern District of New York, made, dated and entered September 5, 1963, 63 Civ. 1766.
>
> 3. From on or about January 1, 1954 until on or about April 8, 1958, Plaintiff performed work, labor and transportation of cargo services and furnished motor vehicles to the Defendant at the special instance, request, order and demand of the Defendant's agents, servant and employee, the Federal Maritime Board, of the value of $877,500.63 and no part of the said sum has been paid and it remains unpaid.
>
> 4. The Defendant owes Plaintiff the sum of $877,500.63 for work, labor and cargo transportation services requested during the period of time between or about January 1, 1954 until on or about April 8, 1958 and performed at the special instance, request, demand and order of the Defendant's agent, servant and employee, the Federal Maritime Board and no

part of the aforesaid sum has been paid and it remains unpaid.

5. The Plaintiff is the sole owner of the claim herein set forth and no transfer or assignment thereof or of any part thereof or interest therein has been made, except that the Defendant has asserted a claim of $37,107.72, against Plaintiff for the alleged non-payment of taxes.

Wherefore plaintiff prays for judgment in the sum of 840,392.91 in this action and for such other and further relief as may be just and proper."

In an order dated October 9, 1964, the United States Court of Claims held that:

"ORDER

"This case comes before the Court on Defendant's motion and plaintiff's cross motion for summary judgment. Upon consideration thereof, and without oral argument, it is concluded that plaintiff is not entitled to recover. See Rivoli Trucking Corporation *v.* American Export Lines, et al., 167 F. Supp. 937 E. D. N. Y. (1956); Rivoli Trucking Corporation *v.* New York Shipping Ass'n., et al 167 F. Supp. 940, S. D. N. Y. (1956), rehearing denied June 15, 1957; Rivoli Trucking Corporation *v.* New York Shipping Ass'n., 167 F. Supp. 943 (1957); Rivoli Trucking Corporation *v.* Thomas E. Scanlon, 162 F. Supp. 53, E. D. N. Y. (1958).

IT IS THEREFORE ORDERED that the Defendant's motion for summary judgment be and the same is granted, plaintiff's cross motion for summary judgment is denied and plaintiff's petition is dismissed.

By the Court

WILSON COWEN
Chief Judge

Date: October 9, 1964."

Questions Presented.

1. Whether Petitioner is without a forum in which to enforce its rightful claims.

2. Whether under the law of the United States, petitioning carrier has a right to assert, or is entitled to a remedy, to collect, under that law, a debt due, which the United States owes to petitioner arising out of and on account of work, labor and services furnished and performed; but which said debt or account receivable, the United States refuses to recognize, to pay, has not paid, and still refuses to pay, and,

3. Whether under the circumstances set forth at "2" above, the local United States Director of Internal Revenue rightfully imposed upon the persons of the officers of the petitioning corporation, a 100% penalty tax assessment at a time when such tax collector knew and had knowledge that not alone was the United States indebted to the petitioning corporation, but that such tax collector also knew and had knowledge that the said officers of the petitioning corporation, at no time, ever had in their personal possession to enjoy, any part of the taxes claimed due to the United States by the corporation and the said officers never signed or gave the Director of Internal Revenue any instrument in writing under which the said officers undertook to pay the tax debt of the petitioning corporation, claimed due by the United States.

Reasons for Granting the Writ.

On or about August 12, 1953, the Congress of the United States, pursuant to the authority vested in it under Article I Section 8 of the Constitution of the United States, adopted

and approved the following rule, regulation and directive in connection with the handling of foreign and interstate commerce in the Port of Greater New York and at Public Law 252-83rd Congress, 67 Stat. 541 said:

> ". . . the function of loading and unloading trucks and other land vehicles at the piers and other waterfront terminals can and should be performed, as in every other American Port, without the evils and abuses of the public loader system, and by the carriers of freight by water, stevedores and operators of such piers and other waterfront terminals OR THE OPERATORS OF SUCH TRUCKS OR OTHER LAND VEHICLES". (emphasis added.)

On or about February 24, 1959, there came to light in Federal Maritime Board Docket Number 800, 801, 821, the contradictory, contrary and overriding rule and regulation of the Federal Maritime Board which, during all of the times mentioned in the complaints and petitions of petitioning carrier corporation, prevented and prohibited petitioner from serving or working for the owner or consignee of the goods, wares and merchandise, imported or about to be exported, in that the said Federal Maritime Board, approved and adopted the following rule, regulation and practice:

> "We read the Compact (67 Stat. 541) as making it unlawful for anyone other than the five categories mentioned to load and unload trucks but not as requiring that truckers as one of the five mentioned categories must be permitted to load and unload trucks. . . . Truck loading and/or unloading at any pier or waterfront terminal operated by a participating terminal operator at the Port of Greater New York and vicinity shall be performed solely by such terminal operator, his agent, servants and employees at the

> rates and subject to the rules, regulations and practices contained in this tariff and that the tariff shall contain rules, regulations and practices prohibiting the loading and unloading of trucks at piers or other waterfront terminals in said Port by anyone other than the operators of said piers and waterfront terminals and that truckers shall provide a truck which is adequate and suitable for loading and unloading."

It is submitted that it must follow from a reading of the above, that either the several United States District Courts were in error or the United States Court of Claims erred in their respective conclusions on both aspects of the case. It must be remembered and it is of the utmost importance to bear in mind that it was the petitioner that was the owner of all of the land motor vehicles that were taken or caused to be taken in the carriage of goods imported or about to be exported from the United States, pursuant to and under the orders, demands, requests and command of the Defendant's agents, servants and employees, so that petitioner was working for the Defendant in that it was the Defendant's agents that prohibited the petitioner from working for or serving the consignee or owner of the goods.

If there could be any doubt on the construction of the rules, regulations and practices approved and adopted by the Federal Maritime Board, it is clear that those rules were intended to disregard the directive of Congress so as to work an impressment of land vehicles belonging to petitioner into the service of the Defendant for the reason that the contract of carriage which petitioner entered into with the owner or consignee of the goods was knowingly and intentionally prohibited and thus petitioner was prevented by the Defendant's agents from working for the owner or

consignee of the goods and petitioner was at all times forced and compelled to work for the Defendant.

Petitioner believes and avers that it has long been the rule that it is the Congress of the United States that makes and prescribes the rules and regulations under which the interstate and foreign commerce of the United States is carried on, further, it is written that no subordinate agency, bureau or person, shall deny to any "person" within the jurisdiction of the United States, the equal protection of its laws. The United States acts by its legislative, its judicial and its executive officers, it can act in no other way. The constitutional provision therefore must mean that no "bifurcate agency" of the United States, see (Report of the Antitrust Subcommittee, Subcommittee No. 5 on the Judiciary, House of Representatives, Eighty Seventh Congress H Res. 56, March 1, 1962), or the officers or agents by whom its powers are exerted, shall deny to any "person" within its jurisdiction the equal protection of the laws. Whoever, no matter how high or exalted his public office, or by virtue of his public position, under the guise of the august power of the United States Government, denies or takes away the equal protection of the laws, violates the Constitutional inhibition; as he acts in the name and for the United States and is clothed with the power of the United States, his act is that of the United States.

Petitioner believes and avers that the questions involved in this case are of such gravity and importance that they justify the exercise of the jurisdiction vested in this Court under the aforementioned provision to issue a writ of certiorari requiring the cause to be brought here for review from the Court of Claims or that the cause be remanded to the United States District Court for the Southern or

Eastern Districts of New York, whichever forum this Court deems proper.

Wherefore: Your petitioner prays that this Honorable Court will cause the writ of certiorari to be issued pursuant to the power vested in this Court at 28 United States Code 2106.

Respectfully submitted,

William J. Tillinghast, Jr.,
Attorney for Petitioner,
45 Nassau Street,
New York, N. Y. 10005.

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In the Supreme Court of the United States

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v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ARCHIBALD COX,
Solicitor General,

JOHN W. DOUGLAS,
Assistant Attorney General,

SIDNEY M. GLAZER,
FLORENCE WAGMAN ROISMAN,
Attorneys,
Department of Justice,
Washington, D. C., 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 735

RIVOLI TRUCKING CORPORATION

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Prior to December 31, 1953, truck loading and unloading at the Port of Greater New York was done by public loaders. This system was abolished by the New York-New Jersey Waterfront Commission Compact, approved by Act of August 12, 1953, 67 Stat. 541, which provides, in pertinent part:

> [T]hat the function of loading and unloading trucks and other land vehicles at the piers and other waterfront terminals can and should be performed, as in every other major American port,

> without the evils and abuses of the public loader system, and by the carriers of freight by water, stevedores and operators of such piers and other waterfront terminals or the operators of such trucks or other land vehicles.

In 1955, in accordance with the Compact and pursuant to Section 15 of the Shipping Act (39 Stat. 733, 46 U.S.C. 814), the Federal Maritime Board (now the Federal Maritime Commission) approved Agreement No. 8005, which authorized the marine terminal operators in the Port of New York "to load or unload waterborne freight onto or from vehicles at piers or at other waterfront terminals in the Port of Greater New York and vicinity, for a fee or other compensation, under the provisions and subject to the requirements of Public Law 252—83rd Congress * * *."[1]

Petitioner, a trucking company, objects to the requirement that loading operations be performed by the terminal operators. It first sought treble damages under the antitrust laws on the ground that certain marine carriers, terminal operators and stevedores were conspiring to prevent petitioner from performing its business of loading. The district court dismissed the suit, holding that if the allegations of the complaint were true they would constitute violations of the Shipping Act, over which the Federal Maritime Board had primary jurisdiction. *Rivoli Trucking Corp.* v. *New York Shipping Ass'n*, 167 F. Supp.

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[1] The foregoing account is derived from *Empire State Highway Transp. Ass'n* v. *American Export Lines*, 5 F.M.B. 565.

940 (S.D.N.Y.) A motion for leave to file an amended and supplemental complaint was denied. 167 F. Supp. 943 (S.D.N.Y.).

Meanwhile, in 1956, petitioner filed with the Federal Maritime Board a complaint alleging that the terminal charges and practices of the New York Shipping Association and others violated the Shipping Act. In 1957, petitioner filed with the Board a second complaint against the same respondents, alleging that the charges for use of and access to their facilities violated the Shipping Act. Both complaints were dismissed for lack of prosecution in 1959.[2]

While the complaints before the Board were pending, petitioner brought suit in the district court against 36 terminal operators, alleging that they had refused to accept freight unless petitioner paid a "mandatory fee" and that they had refused to permit petitioner to load its trucks unless it paid a loading fee. The complaint alleged that the cause of action arose under the Waterfront Commission Compact. The district court held that the allegations, if true, constituted violations of the Shipping Act, which were within the primary jurisdiction of the Federal Maritime Board. *Rivoli Trucking Corp.* v. *American Export Lines*, 167 F. Supp. 937 (E.D.N.Y.).[3]

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[2] App. 8-9.

[3] Petitioner also sued to enjoin the enforcement of concededly valid tax liens until the Federal Maritime Board had acted on petitioner's complaints. This complaint was dismissed. *Rivoli Trucking Corp.* v. *Scanlon*, 162 F. Supp. 53 (E.D.N.Y.). Although petitioner did not appeal from this judgment, it seeks to raise the same issue in this Court (Pet. 8). Plainly, the issue has no place in the present case.

Petitioner then sued the United States in the district court under 28 U.S.C. 1346(a)(1) to recover an amount allegedly illegally assessed by the Federal Maritime Board as, in effect, a tax. The complaint was dismissed in an unreported opinion (S.D.N.Y., 62 Civ. 2484, October 4, 1962). Petitioner moved to amend that complaint to include a tort claim for misrepresentation. The motion was denied in an unreported opinion (S.D.N.Y., 62 Civ. 2484, February 8, 1963). Without taking an appeal, petitioner asked the court of appeals to vacate the judgment of dismissal; the motion was denied. Petitioner moved to re-open the judgment and for the award of just compensation for property taken. These motions were denied in an unreported opinion (S.D.N.Y., 62 Civ. 2484, May 28, 1963).[4]

Petitioner brought suit next in the State courts. Six of the eight causes of action were dismissed on the ground that the court lacked jurisdiction to vindicate rights under the Shipping Act which the Federal Maritime Board had primary jurisdiction. Causes of action alleging conversion and destruction of petitioner's property, which the court described as "insufficiently pleaded and * * * vague, indefinite and uncertain," were dismissed with leave to serve an amended complaint. Petitioner apparently never pursued this opportunity. *Rivoli Trucking Corp.* v. *American Export Lines*, 17 Misc. 2d 569, 573, 185 N.Y.S. 2d 684, 689 (Sup. Ct.).

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[4] The three unreported opinions are included in the Appendix to the Government's motion for summary judgment in the Court of Claims.

Finally, petitioner brought the present suit sounding in contract in the district court, which, because of the amount involved, transferred the case to the Court of Claims. 221 F. Supp. 532 (S.D.N.Y.).

The Court of Claims was clearly right in dismissing the petition. It is obvious from the foregoing that the present suit is simply the latest in a series in which petitioner has attempted to avoid the initial determination that its remedy lay with the Federal Maritime Board and to fashion its own remedy in the courts. This most recent attempt is wholly without foundation. Petitioner had no contract with the Maritime Board. It performed no work at the behest or for the benefit of the Board. As the uncontradicted affidavit before the Court of Claims showed, the Board never requested or demanded that petitioner perform services or furnish goods to it, and never "had any commercial dealings of any nature" with petitioner (App. 6-7).

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

JOHN W. DOUGLAS,
Assistant Attorney General.

SHERMAN L. COHN,
FLORENCE WAGMAN ROISMAN,
Attorneys.

DECEMBER 1964

APPENDIX

)
Washington, D. C.) ss
)

AFFIDAVIT

Thomas Lisi, being duly sworn, deposes and says:

1. I am the Secretary of the Federal Maritime Commission and, as such, I am the custodian of the official records of the Commission.

2. I was the Secretary of the Federal Maritime Board from October 3, 1960, until it was succeeded by the Federal Maritime Commission under the provisions of Reorganization Plan No. 7 of 1961, H. Doc. 187, 87th Cong., 1st session.

3. The functions of the Federal Maritime Board were prescribed in Reorganization Plan No. 21 of 1950 (64 Stat. 1273). The Board was charged with the investigation, regulation and control of rates, fares, charges, classifications, tariffs, regulations, and practices of common carriers by water under the provisions of the Shipping Act, 1916; the Intercoastal Shipping Act, 1933; and the Merchant Marine Act, 1920. The Board was also charged with the administration of the program of government subsidizing of certain carriers.

4. The Board, in the performance of its statutory functions, never found it necessary to own trucks, or to charter them from Rivoli Trucking Corporation, or from any other source; and, in fact, never owned or chartered trucks.

5. The Board's dealings with Rivoli Trucking Corporation were confined to the occasions when the said Rivoli Trucking Corportion appeared before it as a

litigant in Board proceedings. The Board at no time requested, demanded or ordered the Rivoli Trucking Corporation to perform work, labor and services; and at no time has the Federal Maritime Board or the Federal Maritime Commission had any commercial dealings of any nature whatsoever with Rivoli Trucking Corporation.

6. There is not now, nor has there ever been any amount due or owing to the Rivoli Trucking Corporation from the Federal Maritime Board or the Federal Maritime Commission.

/s/ Thomas Lisi
THOMAS LISI
Secretary

My Commission Expires May 31, 1967.

Subscribed and Sworn to before me this 24th day of July, 1963.

/s/ Ruth May Burroughs
Notary Public

)
Washington, D. C.) ss
)

AFFIDAVIT

Thomas Lisi, being duly sworn, deposes and says:

1. I am the Secretary of the Federal Maritime Commission and, as such, I am the custodian of the official records of the Commission.

2. I was the Secretary of the Federal Maritime Board from October 3, 1960, until it was succeeded by the Federal Maritime Commission under the provisions of Reorganization Plan No. 7 of 1961, H. Doc. 187, 87th Cong., 1st session.

3. There is nothing in the official records of the Federal Maritime Board or of the Federal Maritime Commission that indicates that the Federal Maritime Board ever levied, or attempted to levy, or assessed, charged, or collected, or attempted to assess, charge, or collect any tax in connection with the Rivoli Trucking Corporation, or any other person, association, or corporation whatsoever.

4. On March 23, 1955, the Federal Maritime Board approved an agreement, No. 8005, pursuant to section 15 of the Shipping Act, 1916, 46 U.S.C. § 814, authorizing certain terminal operators and common carriers by water to assess and collect specified terminal charges in the port of New York, New York. By report and order served March 12, 1959, the Federal Maritime Board approved a modification to Agreement No. 8005, namely Agreement No. 8005-1. A copy of the above-mentioned report, order and agreements are attached hereto.

5. On October 15, 1956, the Rivoli Trucking Corporation filed a complaint against the New York

Shipping Association et al., with the Federal Maritime Board, alleging that the respondents' terminal charges and practices were in violation of the Shipping Act, 1916, 46 U.S.C. § 801 *et seq.* The complaint was assigned Docket No. 803. By order served July 10, 1959, the complaint was dismissed for lack of prosecution.

6. On February 26, 1957, the Rivoli Trucking Corporation filed another complaint against the New York Shipping Association et al. alleging that the respondents' charges for the use and access to their terminals, docks, piers, and wharves were in violation of the Shipping Act, 1916. That complaint was assigned Docket No. 814. By order served on April 24, 1959, the complaint was dismissed for lack of prosecution.

/s/ Thomas Lisi
THOMAS LISI

Subscribed and Sworn to before me this 15 day of August, 1962

/s/ Ruth May Burroughs
Notary Public

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